

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DA VONTE LOVE,

Plaintiff,

v.

Case No. 24-C-328

CO RHODE, et al.,

Defendants.

ORDER

On May 7, 2024, the Court dismissed this case without prejudice based on Plaintiff Da Vonte Love's failure to pay the civil case filing fee in full. Dkt. Nos. 11 & 12. Plaintiff appealed the decision and filed a motion for leave to appeal without prepayment of the filing fee, along with a "motion to accept appeal as timely filed." Dkt. Nos. 14, 15, & 18. Plaintiff's notice of appeal was timely filed on May 23, 2024; therefore, the Court will deny as moot his motion to accept appeal as timely filed.

Under the Prison Litigation Reform Act, a prisoner must pay the applicable filing fee in full for a civil action. 28 U.S.C. § 1915(b). If a prisoner does not have money to prepay the \$605.00 appellate filing fee, he can file a motion for leave to appeal without prepayment of the filing fee. The prisoner must submit his petition along with an affidavit stating that he is indigent and a certified copy of his trust account statement showing transactions for the prior six months. 28 U.S.C. § 1915(a)(2).

District courts can deny a request to appeal without prepayment of the filing fee for one of three reasons: the prisoner has not established indigence, the appeal is not taken in good faith, or

the prisoner has three strikes. *See* 28 U.S.C. §§ 1915(a)(2)-(3), (g). The Court already found that Plaintiff has accrued “three strikes” and did not allege imminent danger of serious physical injury in this case. *See* Dkt. Nos. 5, 7, & 11. Accordingly, the Court will deny his motion for leave to appeal without prepayment of the filing fee. If Plaintiff wishes to proceed with this appeal, he shall forward to the Clerk of this Court the sum of \$605.00 as the full appellate filing fee within 30 days of the date of this order. The payment shall be clearly identified by the case name and number assigned to this action. If Plaintiff fails to comply with this order, the United States Court of Appeals for the Seventh Circuit may dismiss his appeal.

Plaintiff is advised that he may alternatively file a separate motion for leave to appeal without prepayment of the filing fee *with the Court of Appeals* within 30 days of the date of this order. *See* Fed. R. App. P. 24(a)(5). With that motion, Plaintiff must include: (1) an affidavit as described in the first paragraph of Fed. R. App. P. 24(a); (2) a statement of issues he intends to argue on appeal; and (3) a copy of this order. If Plaintiff does not file such a motion, the Court of Appeals may require him to pay the entire \$605 filing fee before it considers his appeal. If Plaintiff does not pay the fee within the deadline set, the Court of Appeals may dismiss the appeal.

IT IS THEREFORE ORDERED that Plaintiff’s motion for leave to appeal without prepayment of the filing fee (Dkt. No. 15) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff’s motion to accept the appeal as timely filed (Dkt. No. 18) is **DENIED as moot**.

IT IS FURTHER ORDERED that, if Plaintiff wishes to proceed with this appeal, he shall forward to the Clerk of this Court the sum of **\$605.00** as the full appellate filing fee **within 30 days of the date of this order**. The payment shall be clearly identified by the case name and

number assigned to this action. If Plaintiff fails to comply with this order, the Court of Appeals may dismiss his appeal.

IT IS FURTHER ORDERED that copies of this order be sent to the officer in charge of the agency where Plaintiff is confined.

IT IS FURTHER ORDERED that a copy of this order be provided to the PLRA Attorney, United States Courts of Appeals for the Seventh Circuit, through the Court's electronic case filing system.

Dated at Green Bay, Wisconsin this 29th day of May, 2024.

s/ William C. Griesbach
William C. Griesbach
United States District Judge